

HOUSE BILL 1439  
By Ritchie

AN ACT to enact the "Sunshine in Litigation Act of 1997".

WHEREAS, the civil justice system is funded by the public to resolve disputes in accordance with justice and the public laws; and

WHEREAS, the public cannot determine whether the civil justice system is resolving disputes in accordance with justice and the public laws if information relevant to the disputes or the system's resolution of them is secret; and

WHEREAS, unnecessary secrecy in the civil justice system:

(1) undermines the public health and safety by preventing both the public and government officials from learning about, and protecting the public from potential dangers to the public welfare;

(2) undermines the just, speedy, and inexpensive resolution of disputes in our civil justice system by increasing the cost and difficulty of discovering the truth, precluding potential litigants from learning that they have claims, prohibiting similarly situated litigants from efficiently obtaining and voluntarily sharing relevant information, and requiring the judiciary to repeatedly rehear and resolve similar discovery disputes in different cases; and

(3) undermines the democratic process by preventing the public from determining whether the civil justice system is operating justly or whether the system or laws need to be changed; now, therefore,

**\*37493402\***

37493402

**\*000417\***

\*00041724\*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited as, the "Sunshine in Litigation Act of 1997".

SECTION 2. The operations of the civil justice system, including the following information and documents concerning matters before the civil courts, are presumed to be open to the public:

- (1) All information and documents of any nature filed with, submitted to, or issued by any civil court in connection with any matter before it;
- (2) All discovery in any matter before any civil court, whether or not the discovery is filed with or submitted to the court; and
- (3) All settlement agreements in any matter before any civil court, whether or not they are filed with or submitted to the court.

SECTION 3. No court may enter an order having the purpose or effect of limiting public access to any of the information or documents referred to in Section 2 of this act, unless it finds that the person seeking to limit public access has met its burden of proving, with clear and convincing evidence, that:

- (1) There is a specific, serious, and substantial interest in limiting public access to the information or documents;
- (2) The information or documents constitute private facts concerning a natural person or trade secrets or other confidential research, development, or commercially secret data;
- (3) The interest in limiting public access to the information or documents clearly outweighs both the presumption of public access and any adverse effect that limiting public access might have on anyone's safety or health; and
- (4) No less restrictive means than limiting public access will adequately and effectively protect the interest asserted in secrecy.

SECTION 4. No court may enter an order having the purpose or effect of limiting the access of the following persons to information or documents referred to in Section 2 of this act, even when the standard set forth in Section 3 of this act has been met, if those persons voluntarily submit themselves to the jurisdiction of the court for the purpose of permitting enforcement of the provisions of the court's order limiting public access:

(1) A federal state, or local government official with regulatory, investigative, administrative, legislative, judicial, law enforcement, or other responsibility in regard to which the information or documents is relevant; and

(2) a litigant or an attorney for a litigant in a case or potential case in regard to which the information or documents is relevant.

SECTION 5. An order limiting public access in accordance with Section 3 of this act may only be entered upon a written motion, which shall be open to public inspection. Upon filing the motion, or upon learning that any of the information contained in a notice previously issued pursuant to this section is incorrect, the moving party shall:

(1) Determine the time and place of the hearing on the motion, pursuant to procedures to be established by the clerk of the court;

(2) Post a notice, in a public place to be designated by the clerk of the court, stating: the style and number of the case; the identity of the moving party; that a hearing will be held in open court on a motion to limit public access in the case; a brief but specific description of both the nature of the case and the information or documents in regard to which secrecy is sought; the specific time and place of the hearing; that any person may appear, intervene, and be heard on matters relevant to the motion; and the names, addresses, and phone numbers of the attorneys for the parties;

(3) Send a copy of the notice, by first class mail or speedier means, to all members of the public, including all members of the news media, who, in accordance

with procedures to be established by the clerk of the court, have filed a standing request to receive notice of motions seeking to limit public access; and

(4) File a verified copy of the notice, along with proof of its posting and service, with the clerk of the court for inclusion in the case file and with the clerk of the supreme court for inclusion in a publicly open file to be established to enable the state and its citizens to monitor the extent to which motions to limit public access are being filed.

SECTION 6. A public hearing shall be held in open court on all motions seeking to limit public access as soon as practicable, but not less than fourteen (14) days after the motion is filed and notice or, where applicable, revised notice is posted and served. Any person may appear, intervene, and be heard as a matter of right on any matter relevant to the motion.

SECTION 7. Notwithstanding any of the foregoing, in order to facilitate a determination of whether certain information and documents are open to the public:

(1) A court may receive and review information and documents in camera either to determine whether they are discoverable or to determine whether a motion to limit public access to them should be granted;

(2) Upon a written motion and with notice to all parties in the case, a court may enter one (1) temporary and non-renewable order limiting public access to specific information or documents for not more than thirty (30) calendar days so that a hearing can be held and a ruling entered on a motion to limit public access, if:

(A) The moving party demonstrates a compelling need for it by proving, through affidavit or verified petition, specific facts which establish that immediate and irreparable injury will result to a specific interest of the moving party before notice can be given and a hearing held in accordance with the provisions of this act;

(B) The order establishes the time and place for the hearing on the motion to limit public access and requires the party seeking it to immediately

provide the notice of the hearing required by this act, unless such a hearing has previously been scheduled and such notice has previously been given; and

(C) The order explicitly provides that it may be withdrawn or modified upon the motion of any person, with notice to the parties and hearing conducted as soon as practicable, and shall not reduce in any way the burden of the person seeking to limit public access at the hearing.

SECTION 8. A motion to limit public access shall be decided by a written order open to the public, that rules solely on the motion and states the style and number of the case, the specific reasons for finding and concluding whether or not the showing required by Section 3 of this act has been made and, if it finds and concludes that such a showing has been made, the specific information and documents which are to be closed to the public and the time period for which they are to be so closed. Such order limiting public access shall be carefully tailored to ensure that it does not limit public access to any information or documents in regard to which the showing required by Section 3 of this act has not been made.

SECTION 9. Any order or portion thereof ruling on a motion to limit public access or any other request to limit a person's access to information or documents referred to in Section 2 of this act shall be immediately appealable by any person who participated in the hearing preceding issuance of the order.

SECTION 10. Any person may intervene as a matter of right in any civil action at any time before or after judgment to seek to obtain, modify, or vacate an order limiting public access to information and documents relevant to the case. Any person meeting the requirements of Section 4 of this act may also intervene as a matter of right in any civil action at any time before or after judgment to seek to obtain access to information or documents pursuant to the provisions of that section.

SECTION 11. A court that enters an order limiting public access retains continuing jurisdiction to enforce, alter, or vacate that order. Motions to enforce alter, or vacate such

orders shall be subject to all of the provisions of this act, including the notice and hearing provisions of Sections 5 and 6, respectively. An order properly entered in accordance with all of the provisions of this act shall not be reconsidered at the request of a party or intervenor who had actual notice of the hearing preceding issuance of the order unless the party or intervenor shows that some relevant circumstance, not necessarily related to the case in which the order was entered, has changed. No challenged or reconsidered order limiting public access shall remain in effect unless the standard set forth in Section 3 of this act is met at the time at which the order is challenged or reconsidered.

SECTION 12. No court may enter an order having the purpose or effect of requiring any litigant, any attorney, any government official, or any member of the public to return or destroy any legally obtained information or documents referred to in Section 2 of this act.

SECTION 13. No court may enter an order having the purpose or effect of limiting a person's access to information or documents in a case not before the court.

SECTION 14. Any person who substantially prevails in opposing a motion to limit public access shall be entitled to recover an award of costs and reasonable attorneys' fees from the person that moved or joined in the motion to limit public access.

SECTION 15. All provisions in contracts, agreements, and court orders that are contrary to the provisions of this act are void and unenforceable.

SECTION 16. Nothing in this act shall be deemed to open to the public any information or documents to which public access is otherwise restricted by law.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. The provisions of this act are not applicable to provisions in contracts, agreements, and court orders that took effect before July 1, 1997 unless a motion to vacate,

modify, reconsider, or declare void and unenforceable is filed in regard to those provisions.

Any such motion shall be heard and resolved pursuant to the provisions of this act.

SECTION 19. For the purpose of drafting and printing the forms required by this act and establishing the procedures and records necessary to effectuate the provisions of this act, it shall take effect upon becoming a law, the public welfare requiring it. For all other purposes it shall take effect on July 1, 1997, the public welfare requiring it.

AN ACT to enact the "Sunshine in Litigation Act of 1997".

AN ACT to enact the "Sunshine in Litigation Act of 1997".

AN ACT to enact the "Sunshine in Litigation Act of 1997".

AN ACT to enact the "Sunshine in Litigation Act of 1997".